Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-170

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL UNION NO. 701,
Petitioner,

v.

H. A. ANDERSEN CO., INCORPORATED, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

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INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
STATUTES AND FEDERAL RULES OF PROCEDURE INVOLVED	2
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6
I. The decision of the Court of Appeals in this case is in conflict with the decisions of other courts of appeals	6
II. The decision of the Court of Appeals in this case is in conflict with the decisions of this Court	10
III. This Court should decide the question presented in this case because of its importance to the proper and uniform administration of appellate procedure in the federal courts	12
CONCLUSION	13

TABLE OF CITATIONS

Cases:

Blunt v. *United States*, 100 U.S. App. D.C. 266, 244 F.2d 355, 359 (1957)	9
Gerringer v. *United States*, 93 U.S. App. D.C. 403, 213 F.2d 346 (1954)	9
Harris Truck Lines, Inc. v. *Cherry Meat Packers, Inc.*, 371 U.S. 215 (1962)	10
Paternack v. *Comm. of Internal Revenue*, 478 F.2d 488, 593 (D.C. Cir. 1973)	7
Reconstruction Finance Corp. v. *Prudence Sec. Advisory Grp.*, 311 U.S. 579 (1941)	9
Reed v. *Kroger Co.*, 478 F.2d 1268 (TECA 1973)	5, 7
Riffle v. *United States*, 299 F.2d 802 (5th Cir. 1962)	8

TABLE OF CITATIONS—Continued

	Page
Ritchie v. *Wilkins*, 335 F.2d 1 (2d Cir. 1964)	8
Thompson v. *Immigration and Naturalization Service*, 375 U.S. 384 (1964)	10
United States v. *Cooper*, 482 F.2d 1393 (TECA 1973)	5, 6, 7
West v. *United States*, 94 U.S. App. D.C. 46, 222 F.2d 774 (1955)	9
Yanow v. *Weyerhaeuser Steamship Co.*, 274 F.2d 274 282, N.12 (9th Cir. 1959), cert. denied, 356 U.S. 957 (1958)	7, 9
Statutes and Rules:	
15 U.S.C. § 754(a)(1)	12
15 U.S.C. § 766(i)(2)(A)	12
28 U.S.C. § 1254(1)	2
28 U.S.C. § 1291	2, 11
28 U.S.C. § 1294	2, 11
Economic Stabilization Act of 1970, § 211(b)(2), § 211(g)	2, 3, 5
Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 754(a)(1)	12
Federal Energy Administration Act of 1974, 15 U.S.C. § 766(i)(2)(A)	12
Federal Rule of Appellate Procedure 3(a)	3, 8, 12
Federal Rule of Appellate Procedure 4(a)	3
Rule of Temporary Emergency Court of Appeals, 1	4
Rule of Temporary Emergency Court of Appeals, 15(a)	4

IN THE

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OCTOBER TERM, 1976

No.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 701,
Petitioner,

v.

H. A. ANDERSEN CO., INCORPORATED, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

International Union of Operating Engineers, Local Union No. 701 prays that a Writ of Certiorari issue to review the order of the Temporary Emergency Court of Appeals entered on July 8, 1976, dismissing the appeal filed in this case.

OPINIONS BELOW

The order of the Temporary Emergency Court of Appeals dismissing the appeal in this case is unreported. It is printed in the appendix beginning on page 1a.

JURISDICTION

The order of the Temporary Emergency Court of Appeals dismissing the appeal and refusing to accept a transfer of the appeal from the Ninth Circuit was entered on July 8, 1976. This court has jurisdiction to review the order by Writ of Certiorari under 28 U.S.C. § 1254(1) and § 211(g) of the Economic Stabilization Act of 1970, as amended, Pub. L. No. 92-210, § 2, 85 Stat. 750 (1971).

QUESTION PRESENTED

Does a court of appeals have jurisdiction to hear an appeal by accepting a transfer of the appeal or by accepting the filing of a modified notice of appeal when the notice of appeal was filed and served upon the appellee within the time required by law, but was erroneously filed in the wrong court and directed to the wrong court of appeals?

STATUTES AND FEDERAL RULES OF PROCEDURE INVOLVED

Statutes

28 U.S.C. § 1291. Final decisions of district courts.

"The courts of appeal shall have jurisdiction of appeals from all final decisions of the district courts of the United States, . . . except where a direct review may be had in the Supreme Court."

28 U.S.C. § 1294. Circuits in which decisions reviewable.

"Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:

"(1) From a district court of the United States to the court of appeals for the circuit embracing the district.;"

Economic Stabilization Act of 1970, § 211(b)(2) as amended, Pub. L. No. 92210, § 2, 85 Stat. 749 (1971), Judicial Review.

"Except as otherwise provided in this section, the Temporary Emergency Court of Appeals shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under this title or under regulations or orders issued thereunder. Such appeals shall be taken by the filing of a notice of appeal with the Temporary Emergency Court of Appeals within thirty days of the entry of judgment by the district court."

Federal Rules of Appellate Procedure

Rule 3(a). Filing the Notice of Appeal.

"An appeal permitted by law as of right from a district court to a court of appeals shall be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. . . ."

Rule 4(a). Appeals in Civil Cases.

"In a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals, the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days of the

date of the entry of the judgment or order appealed from. . . ."

Rules of The Temporary Emergency Court of Appeals

Rule 1. Scope of Rules.

"These Rules govern the procedure in the Temporary Emergency Court of Appeals of the United States. Except as to matters specifically covered by these Rules, the Federal Rules of Appellate Procedure shall govern the procedure in all cases or proceedings in this court. The Rules shall be constructed to secure the just, speedy and inexpensive determination of every action."

Rule 15(a). Notice of Appeal.

"A notice of appeal in any civil or criminal case arising under the Economic Stabilization Act of 1970 as amended . . . shall be filed with the clerk of this court within 30 days of the entry of judgment by the district court. This time limitation shall be binding upon both government appeals and private appeals."

STATEMENT OF THE CASE

On March 2, 1976, the United States District Court for the District of Oregon entered its judgment in favor of the plaintiff and against the petitioner, International Union of Operating Engineers, Local Union No. 701, for compensatory damages of $79,694.00, punitive damages of $50,000.00 and attorneys' fees in the amount of $74,000.00. The complaint upon which the judgment was based alleged a work stoppage and stated two counts, one for breach of contract and one for alleged violation of the Economic Stabilization Act of 1970.

On March 24, 1976, the petitioner filed a notice of appeal with the United States District Court for the District of Oregon. The notice stated that the appeal

was to the Court of Appeals for the Ninth Circuit. The plaintiffs were promptly served with a copy of the notice. The district court forwarded the notice to the Ninth Circuit. On April 19, 1976, the plaintiffs filed a notice of cross-appeal.

On May 10, 1976, the plaintiffs filed a motion with the Court of Appeals to dismiss the appeal upon the ground that § 211(b)(2) of the Economic Stabilization Act of 1970 gave the Temporary Emergency Court of Appeals exclusive jurisdiction to review the judgment. On May 19, 1976, the petitioner filed a motion with the Court of Appeals for the Ninth Circuit requesting that the appeal be transferred to the Temporary Emergency Court of Appeals. That motion is printed in the appendix at page 3a. On May 25, 1976, the petitioner filed a modified notice of appeal with the Temporary Emergency Court of Appeals along with a motion requesting that court to accept transfer of the appeal from the Ninth Circuit. That motion and the modified notice of appeal are printed in the appendix at pages 7a and 9a. On May 25, 1976, the Temporary Emergency Court of Appeals entered an *ex parte* order accepting the filing of the modified notice of appeal.

On July 8, 1976, the Temporary Emergency Court of Appeals vacated the *ex parte* order, refused to accept a transfer from the Ninth Circuit and entered its order dismissing the appeal. The order stated that the matter was controlled by two cases theretofore decided by that court. *Reed* v. *Kroger Co.*, 478 F.2d 1268 (TECA 1973), and *United States* v. *Cooper*, 482 F.2d 1393 (TECA 1973).

REASONS FOR GRANTING THE WRIT

I. The decision of the Court of Appeals in this case is in conflict with decisions of other courts of appeals.

First. The Court of Appeals for the Ninth Circuit has held that an appeal in a case brought under the Economic Stabilization Act of 1970 should be transferred to the Temporary Emergency Court of Appeals when the notice of appeal was timely filed but erroneously misdirected to the Court of Appeals for the Ninth Circuit. In this and in one other case the Temporary Emergency Court of Appeals has held that such appeals should not be transferred. In both cases it held that it had no jurisdiction, refused to accept a transfer from the Ninth Circuit, and dismissed the appeal.

In *United States* v. *Cooper*, 482 F.2d 1393 (TECA 1973), the United States District Court for the Central District of California entered two judgments in one case, one imposing civil penalties for violations of the Economic Stabilization Act of 1970 and the other imposing a criminal penalty of probation for making false statements in violation of a different federal statute. The defendant filed one notice of appeal in the District Court. The Court of Appeals for the Ninth Circuit entered an order transferring the entire appeal to the Temporary Emergency Court of Appeals. The Temporary Emergency Court of Appeals held that it had no jurisdiction of the criminal conviction because it did not involve the Economic Stabilization Act. It returned that matter to the Ninth Circuit. It held that as to the civil penalties arising under the Stabilization Act, it had "no jurisdiction" because the appellant "failed to file a timely appeal with the TECA." 482 F.2d at 1400.

In this case the Temporary Emergency Court of Appeals held that it was bound by its decision in the *Cooper* case and it refused to accept a transfer from the Ninth Circuit.

These decisions of the Temporary Emergency Court of Appeals are in direct conflict with the decision of the Ninth Circuit in the *Cooper* case. This Court should resolve that conflict and establish a uniform rule either permitting or refusing to permit a transfer from an improper court of appeals to the proper court of appeals.

Second. The uniform rule in this Court and among the courts of appeals of the various circuits is that a notice of appeal is sufficient to invoke the jurisdiction of the court of appeals if it is timely filed even though it is filed in the wrong court. In this case, in the *Cooper* case, and in *Reed* v. *Kroger Co.*, 478 F.2d 1268 (TECA 1973), the Temporary Emergency Court of Appeals has held that it has no jurisdiction of an appeal when the notice of appeal, although timely filed, was filed in the wrong court.

In *Reed* v. *Kroger Co.*, *supra*, a judgment was entered by the United States District Court for the Southern District of Indiana on October 18, 1972. On November 15, 1972, the appellant delivered to the Clerk of the District Court for the Southern District of Indiana a notice of appeal to the Temporary Emergency Court of Appeals. On January 29, 1973, the appellant filed a notice of appeal with the Temporary Emergency Court of Appeals with a motion that it be accepted nuc pro tunc. The Temporary Emergency Court of Appeals held that the failure to file the notice of appeal in the Temporary Emergency Court of Appeals within the thirty-day period required was fatal and dismissed the appeal.

In *Yanow* v. *Weyerhaeuser Steamship Co.*, 274 F.2d 274, 282-83 (9th Cir. 1959), cert. denied, 356 U.S. 957 (1958), and *Pasternack* v. *Comm. of Internal Revenue*, 478 F.2d 588, 593 (D.C. Cir. 1973), the courts said:

> "There is a considerable body of authority indicating that in determining whether an attempted appeal has been accomplished, most informally drawn papers and improperly labelled documents have been sufficient to accomplish the apparent objective of taking an appeal . . .
>
> . . .
>
> "The rationale of the cases relating to informal or irregular appeals is that notwithstanding the papers filed are inaptly worded or labelled, or even failed to use the word 'appeal' or *were filed in the wrong court*, yet they sufficed to show the parties intended to appeal." (Emphasis added.)

Federal Rule of Appellate Procedure 3(a) states:

> "Failure of an appellant to take any steps other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal."

That rule has been interpreted to mean that an appeal is valid when the notice of appeal was filed within the time permitted, even though it was filed in the wrong court.

Erroneous filing of a notice of appeal with the court of appeals within the 30 days permitted (when the rule requires filing in the district court) has been held to be sufficient to effect an appeal and to invoke the jurisdiction of the court of appeals. *Ritchie* v. *Wilkins*, 335 F.2d 1 (2d Cir. 1964). A letter written to a judge of the court of appeals (when a notice should have been filed in the district court) has been held to be effective as a duly filed notice of appeal when it was filed within the time permitted. *Riffle* v. *United States*, 299 F.2d 802 (5th Cir. 1962).

Blunt v. *United States*, 100 U.S. App. D.C. 266, 244 F.2d 355, 359 (1957); *Gerringer* v. *United States*, 93 U.S. App. D.C. 403, 213 F.2d 346 (1954); and *West* v. *United States*, 94 U.S. App. D.C. 46, 222 F.2d 774 (1955), all held that there was "a sufficient notice of appeal although the paper was labelled a motion for leave to appeal in forma pauperis and in each case *the document was filed in the wrong court.*" *Yanow* v. *Weyerhaeuser Steamship Co.*, 274 F.2d 274, 282, n.12, (9th Cir. 1959), *cert. denied*, 356 U.S. 957 (1958). (Emphasis added.)

If uniform principles are applied throughout the system of federal courts, the erroneous filing of a notice of appeal in the United States District Court whose judgment is appealed from (when the rules require the notice of appeal be filed with the court appealed to) should be no less fatal than the erroneous filing of a notice of appeal with the United States Court of Appeals that is appealed to (when the rules require that the notice be filed with the court appealed from).

In *Reconstruction Finance Corp* v. *Prudence Sec. Advisory Grp.*, 311 U.S. 579 (1941), the petitioner filed a notice of appeal in the District Court when the statute required that it be filed in the Court of Appeals. The Court of Appeals for the Second Circuit dismissed the appeal. This Court reversed, stating:

> "Normally the Circuit Court of Appeals would be wholly justified in treating the mere filing of a notice of appeal in the District Court as insufficient. But the defect is not jurisdictional in the sense that it deprives the court of power to allow the appeal. The court has discretion, where the scope of review is not affected, to disregard any such irregularity in the interest of substantial justice . . . . In this case the effect of procedural irregularity was not substantial. The scope of review was not altered. There was no question of the good faith of petitioners, of

> dilatory tactics, or of frivolous appeals . . . . The failure to comply with statutory requirements . . . . is not necessarily a jurisdictional defect." 311 U.S. at 582-83.

This difference between the decisions of the Temporary Emergency Court of Appeals and those of the circuit courts is not justified by any difference in the language of the applicable statutes or rules of procedure. The language of the rules of appellate procedure, the Economic Stabilization Act, and the rules of the Temporary Emergency Court of Appeals is virtually identical insofar as it prescribes the time and the place for filing a notice of appeal.

The decisions of the Temporary Emergency Court of Appeals are in direct conflict with decisions of all other courts of appeals that hold that a notice of appeal is effective if it is timely filed even if it is filed in the wrong court.

This Court should resolve this conflict by establishing a uniform rule applicable to all appeals and all courts of appeal and stating whether the timely filing of a notice of appeal is or is not effective if it is filed in the wrong court.

II. The decision of the Court of Appeals is in conflict with decisions of this Court.

This Court has held that when a district court causes an appellant to believe that he has more than the permitted time for filing an appeal, unique circumstances exist and the appeal is effective even if the notice of appeal is not filed in time. *Thompson* v. *Immigration and Naturalization Service*, 375 U.S. 384 (1964); *Harris Truck Lines, Inc.* v. *Cherry Meat Packers, Inc.*, 371 U.S. 215 (1962).

In this case the petitioner was misled by two inconsistent United States Statutes.

28 U.S.C. § 1291 states:

> "The courts of appeal shall have jurisdiction of appeals from *all* final decisions of the district courts of the United States . . . . except where a direct review may be had in the Supreme Court." (Emphasis added.)

28 U.S.C. § 1294 provides:

> "Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:
>
> "(1) From a district court of the United States to the court of appeals for the circuit embracing the district;"

There is no exception in this statute indicating that appeals from any district court judgment should be taken to any court of appeals other than the one in the circuit embracing the district court whose judgment is appealed from. When Congress granted to the Temporary Emergency Court of Appeals the exclusive jurisdiction to hear appeals from district court decisions involving the Economic Stabilization Act of 1970, it did not amend or provide an exception to 28 U.S.C. § 1291 or § 1294.

When Congress has considered the matter, it has provided that cases filed in improper courts may be transferred to proper courts. See 28 U.S.C. § 1506 providing for transfer of cases from the court of claims to the district court. But, in this case, Congress inadvertently created a trap that has resulted in the filing of a notice of appeal in the wrong court. These circumstances are unique to the same extent as those in the *Thompson* and *Harris* cases and should be sufficient to permit the Temporary Emergency Court of Appeals to retain jurisdiction.

III. This Court should decide the question presented in this case because of its importance to the proper and uniform administration of appellate procedure in the federal courts.

Uniform principles should apply to rules of procedure in all United States courts of appeals. The Federal Rules of Appellate Procedure apply in the Temporary Emergency Court of Appeals except where matters are specifically covered by that court's own rules. The Temporary Emergency Court of Appeals has no rule contrary to Federal Rule of appellate Procedure 3(a) which states:

> "Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal . . . ."

No reason appears from the language of the applicable statutes or rules of procedure that would justify application of different principles in the Temporary Emergency Court of Appeals than those that are applied in the circuit courts.

If different principles should apply, such a rule should be established by a decision of this Court.

There are several circumstances in which a party might seek review in the wrong United States court of appeals. The statute providing for review of administrative rules published by the Federal Energy Administration states that review of rules of national applicability can be obtained only in the Court of Appeals for the District of Columbia, and that review of rules that are not of national applicability can be obtained only in the Court of Appeals for the appropriate circuit. Federal Energy Administration Act of 1974, 15 U.S.C. § 766(i)(2)(A). The Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 754(a)(1), incorporates § 211 of the Economic Stabilization Act of 1971 and provides that the Temporary Emergency Court of Appeals has exclusive jurisdiction to review district court judgments involving that statute. Thus, the problem existing in this case may continue to arise. This Court should, to the extent possible, establish that timely filing of a notice of appeal in the wrong court is or is not fatal to the appeal, that transfers from an improper to a proper court will or will not be permitted, and that uniform principles are or are not to be applied when determining jurisdictional questions in all the courts of appeal.

CONCLUSION

For the reasons stated, the Petition for Certiorari should be granted.

Respectfully submitted,

ROBERT J. MILLER
TERRY DESYLVIA
BLACK, KENDALL, TREMAINE,
BOOTHE & HIGGINS
1300 S.W. Fourth Avenue
Portland, Oregon 97201

APPENDIX

APPENDIX

TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

No. 9-33

No. 9-34

H. A. ANDERSEN CO., INCORPORATED, ET AL.,
Plaintiffs-Appellees, Cross-Appellant,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 701,
Defendant-Appellant, Cross-Appellee.

Appeal from the United States District Court for the District of Oregon

(Civ. 72-726)

Terry DeSylvia, Black, Kendall, Tremaine, Boothe & Higgins, Portland, Oregon, for the Appellant.

Michael G. Holmes, Dezendorf, Spears, Lubersky & Campbell, Portland, Oregon, for the Appellees.

ORDER

Before CARTER, CHRISTENSEN and ESTES, Circuit Judges

This case is controlled by prior decisions of this court, Reed v. Kroger Co. (T.E.C.A. 1973), 478 F.2d 1268, and United States v. Cooper (T.E.C.A. 1973), 482 F.2d 1393.

The motion of the plaintiffs to vacate the order of May 25, 1976, allowing the defendant's out-of-time filing of a notice of appeal in No. 9-33 is granted.

The motion of the plaintiffs to dismiss the defendant's appeal in No. 9-33 is granted. Accordingly, the plaintiffs cross appeal in No. 9-34 is also dismissed.

July 8, 1976

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 76-1816

H. A. ANDERSEN CO., INCORPORATED, ET AL.,
Plaintiffs-Appellees,

vs.

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL UNION NO. 701,
Defendant-Appellant.

MOTION TO TRANSFER

Defendant-appellant, International Union of Operating Engineers, Local Union No. 701, moves this court:

I.

To transfer this appeal to the United States Temporary Emergency Court of Appeals in Washington, D.C.

II.

To withhold any decision on plaintiffs-appellees' motion to dismiss the file herein pending a decision by the United States Temporary Emergency Court of Appeals as to whether that court would accept the transfer of this appeal.

In support of this motion, defendant-appellant will rely on the affidavit of Terry DeSylvia, one of the attorneys for defendant-appellant, attached hereto as Exhibit "A,"

together with points and authorities cited in its reply to appellees' motion to dismiss this appeal.

Respectfully submitted,

/s/ Terry DeSylvia
TERRY DESYLVIA
BLACK, KENDALL, TREMAINE, BOOTHE & HIGGINS

Attorneys for Defendant-Appellant

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 76-1816

H. A. ANDERSEN CO., INCORPORATED, ET AL.,
Plaintiffs-Appellees,
vs.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 701,
Defendant-Appellant.

AFFIDAVIT

STATE OF OREGON,)
) ss.
COUNTY OF MULTNOMAH)

I, TERRY DeSYLVIA, being first duly sworn, on oath depose and say:

That I am one of the attorneys for the defendant-appellant (Local 701) in the above-entitled case. On March 2, 1976, judgment was entered against Local 701 herein. Up to the time of judgment, I had not participated in the defense of this matter. Following the entry of the judgment, I was requested to contact Local 701 to ascertain whether an appeal was to be made. I did this and it was determined that an appeal should be filed. The judgment order from which the appeal was taken made no mention of the Economic Stabilization Act of 1970 or the Temporary Emergency Court of Appeals. Having had experience in effecting appeals from the United States District Court for the District of Oregon to its regular appellate court, the Ninth Circuit Court of Appeals, I directed the appeal in this case to said appellate division of the Federal Court system. On

March 24, 1976, the notice of appeal was timely filed in the regular course with the clerk of the United States District Court for the District of Oregon.

Within fourteen days after filing said notice, plaintiffs-appellees filed in this court a notice of cross-appeal from the same judgment. On May 10, 1976, I received service of a motion filed by plaintiffs-appellees to dismiss this appeal on the grounds that this court lacks jurisdiction and that the appeal properly should have been taken to the Temporary Emergency Court of Appeals. Because plaintiffs-appellees delayed filing the motion to dismiss for a period of sixty days, there was no opportunity to seek relief under Rule 4(a), Federal Rules of Appellate Procedure.

TERRY DESYLVIA
Terry DeSylvia

Subscribed and sworn to before me this 18 day of May, 1976.

ELIZABETH A. MOORE
Notary Public for Oregon
My commission expires: 6/17/79

TEMPORARY EMERGENCY COURT OF APPEALS
OF THE UNITED STATES

TECA Docket No.

District Court No. 72-726

H. A. ANDERSEN CO., INCORPORATED, GORDON H. BALL, INC., GENERAL CONSTRUCTION COMPANY, W. H. GREGORY COMPANY, HANNAN BROS. CONSTRUCTION, INC., PETER KIEWIT SONS' CO., MATICH CONSTRUCTORS, ROGERS CONSTRUCTION, INC., WESTERN PACIFIC PILEDRIVING CO., WHITE BROS. CONSTRUCTION CO., INC. AND WILLARD R. ROGERS AND DONALD C. ROGERS, DBA ROGERS CONSTRUCTION CO.,

Plaintiffs-Appellees

vs.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 701,

Defendant-Appellant.

MOTION TO THE
TEMPORARY EMERGENCY COURT OF APPEALS

The International Union of Operating Engineers, Local No. 701, defendant-appellant, moves this court to allow the filing of the modified notice of appeal set forth in Exhibit 1 attached, or in the alternative, to accept a transfer of the appeal filed in the United States Court of Appeals for the Ninth Circuit on March 24, 1976, entitled "H. A. Andersen Co., Inc., et al, plaintiff-appellees, vs. International Union of Operating Engineers, Local No. 701, defendant-appellant," in the United States Court of Appeals for the Ninth Circuit, Registry No. 76-1816.

This motion is based on the notice of appeal attached as Exhibit 1, the statement in supplement to notice of

appeal attached as Exhibit 2, the affidavit of Terry DeSylvia attached as Exhibit 3, and the memorandum of points and authorities submitted herewith.

/s/ Terry DeSylvia
TERRY DESYLVIA
BLACK, KENDALL, TREMAINE, BOOTHE & HIGGINS
3100 First National Bank Tower
Portland, Oregon 97201

TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

TECA Docket No.

District Court No. 72-726

H. A. ANDERSEN CO., INCORPORATED, GORDON H. BALL, INC., GENERAL CONSTRUCTION COMPANY, W. H. GREGORY COMPANY, HANNAN BROS. CONSTRUCTION, INC., PETER KIEWIT SONS' CO., MATICH CONSTRUCTORS, ROGERS CONSTRUCTION, INC., WESTERN PACIFIC PILEDRIVING CO., WHITE BROS. CONSTRUCTION CO., INC. AND WILLARD R. ROGERS AND DONALD C. ROGERS, DBA ROGERS CONSTRUCTION CO.,

Plaintiffs-Appellees,

VS.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 701,

Defendant-Appellant.

MODIFIED NOTICE OF APPEAL

Notice is hereby given that International Union of Operating Engineers, Local No. 701, defendant-appellee above named, hereby appeals to the Temporary Emergency Court of Appeals of the United States from the final judgment awarding compensatory damages, attorneys' fees and punitive damages entered in this action on the 2nd day of March, 1976, by Judge James M. Burns in the District Court for the District of Oregon.

This notice is a modification of the notice of appeal from the judgment herein filed on March 24, 1976 in the United States Court of Appeals for the Ninth Circuit.

DATED this 24 day of May, 1976.

/s/ Terry DeSylvia
TERRY DESYLVIA
BLACK, KENDALL, TREMAINE, BOOTHE & HIGGINS
3100 First National Bank Tower
Portland, Oregon 97201